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OFFICE OF PETITIONS

| | |
|---------------------------------------|-----------------------------|
| In re Application of | : |
| Kamel Khalili | : |
| Patent Number: 7,612,039 | : DECISION ON REQUEST |
| Issue Date: 11/03/2009 | : FOR RECONSIDERATION OF |
| Application No. 10/517710 | : PATENT TERM ADJUSTMENT |
| Filing or 371(c) Date: 07/27/2005 | : and |
| Attorney Docket Number: 06056-0309US1 | : NOTICE OF INTENT TO ISSUE |
| | : CERTIFICATE OF CORRECTION |

This is a decision on the petition filed on December 30, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred fifty-nine (459) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by four hundred fifty-nine (459) days is **GRANTED to the extent indicated herein.**

The calculation of delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date of December 13, 2004, not December 10, 2004. As the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a Sunday, the period expired on the subsequent business day¹. See PCT Rule 80.5. Accordingly, the commencement date is Monday, December 13, 2004, and the "B" delay ends on August 4, 2008, the day before the RCE was filed. See, 35 U.S.C. 154(b)(1)(B)(i).

Further as to the "B" delay, the period of adjustment of 235 days is reduced to the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, and the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. 35 U.S.C. 154(b)(2)(A), 37 CFR 1.702(f). In this instance, the period of

¹ The commencement date may be earlier than 30 months where (1) an applicant expressly requested early commencement, and completed all requirements under 35 U.S.C. 371(c). It is noted that applicant requested, but did not perfect early commencement.

adjustment of 30 days pursuant to 37 CFR 1.702(a)(4) overlaps with the period of adjustment pursuant to 37 CFR 1.702(b). As such, the patent term adjustment is 205, not 235 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred twenty-six (**426**) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,612,039 B2

DATED : November 3, 2009

INVENTOR(S) : Khalili et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 221 days.

Delete the phrase “by 221 days” and insert – by 426 days--